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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,502	11/27/2001	Donald E. Mosing	504	1988

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THE MATTHEWS FIRM  
2000 BERING DRIVE  
SUITE 700  
HOUSTON, TX 77057

EXAMINER

STODOLA, DANIEL P

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/027,502

Applicant(s)

MOSING, DONALD E.

Examiner

Daniel P. Stodola

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on March 28, 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 12-16, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-16, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 8-10, 12, 15, 16, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Guice ('209) as advanced in the previous Office action mailed on December 28, 2005.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 6, 7, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guice ('209) as applied to claims 1, 3-5, 8-10, 12, 15, 16, 19, and 20 above, and further in view of Bee et al ('086) as advanced in the previous Office action mailed on December 28, 2005.

***Response to Arguments***

Applicant's arguments filed March 28, 2006 have been fully considered but they are not persuasive.

At the outset, it should be noted that, during examination, statements in a claim reciting the purpose or intended use of the claimed invention must be evaluated to determine whether such recited purpose or intended use results in a structural difference between the claimed invention and the applied prior art. While features of a device may be recited either structurally or functionally, claims directed to a device must be distinguished from the prior art in terms of structure rather than function because a device claim covers what the device is, not what the device does. Note *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528 (CAFC 1990). Further, for anticipation to exist, it is only necessary for the claim(s) to "read on" something disclosed in a prior art reference. Note *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 781, 789 (CAFC 1983).

The device in question set forth by claim 1 merely requires generally parallel front and back faces (first and second faces in other independent claims). The front face is provided with gripping teeth while the back face is provided with textured relief. This device, as claimed, reads on the device (20) of Guice ('209) and thus is fully met by Guice ('209).

Contrary to applicant's allegation in the second full paragraph on page 8, the faces of Guice ('209) are generally parallel as evidenced by the illustration in Fig. 2. In

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particular, note how the outer facing face of the insert (20) is generally parallel to the inner facing face (26). There is no requirement for the faces to be flat and it is clear from applicant's own disclosure that the teeth are not to be included when considering the faces to be "generally parallel" since if one included the teeth on the faces, then one could not reasonably state that the faces were "generally parallel". Note applicant's Fig. 1 wherein it is illustrated that the faces, but not the teeth thereon, are generally parallel. Thus, it is evident that the surfaces of the teeth do not serve to define the respective faces.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel P. Stodola whose telephone number is (571) 272-7087. The examiner can normally be reached on Monday through Friday from 6:00 a.m. to 2:30 p.m.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



STODOLA

September 12, 2006

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600